

**STATE OF MICHIGAN
SUPREME COURT**

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v.

DWAYNE EDMUND WILSON,

Defendant-Appellee.

Supreme Court
Case No.

Court of Appeals
Case No. 324856

Circuit Court
Case No. 09-2637-FC

**PEOPLE'S APPLICATION FOR LEAVE TO APPEAL
PROOF OF SERVICE**

ERIC J. SMITH (P46186)
Macomb County Prosecuting Attorney

JOSHUA D. ABBOTT (P53528)
Chief Appellate Attorney

By: EMIL SEMAAN (P73726)
Assistant Prosecuting Attorney

Macomb County Prosecutor's Office
1 South Main Street – 3rd Floor
Mount Clemens, Michigan 48043
Ph: (586) 469-5350

PETER JON VAN HOEK (P26615)
Assistant State Appellate Defender

State Appellate Defender's Office
3300 Penobscot Building
645 Griswold Street
Detroit, Michigan 48226
Ph: (313) 256-9833

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I certify that on July 4, 2016, I served, via First Class mail, a copy of:

Document: PEOPLE'S APPLICATION FOR LEAVE TO APPEAL

To: PETER JON VAN HOEK (P26615)
Assistant State Appellate Defender
State Appellate Defender's Office
3300 Penobscot Building
645 Griswold Street
Detroit, Michigan 48226

Emil Semaan

Emil Semaan (P73726)
Assistant Prosecuting Attorney
Macomb County Prosecutor's Office

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STATEMENT OF QUESTIONS PRESENTED

ISSUE I

**SINCE THE PLAIN LANGUAGE OF THE
FELONY FIREARM STATUTE DOES NOT
PRECLUDE THE DEFENDANT HAVING
PRIOR CONVICTIONS FROM THE SAME
INCIDENT, DID THE TRIAL COURT
PROPERLY SENTENCE THE
DEFENDANT AS A THIRD FELONY-
FIREARM OFFENDER?**

Trial Court's Answer: "Yes"

People's Answer: "Yes"

Defendant's Answer: "No"

Court of Appeals' Answer: "No"

STATEMENT OF STATUTE INVOLVEDMCL 750.227b(1)

A person who carries or has in his or her possession a firearm when he or she commits or attempts to commit a felony, except a violation of section 223, 227, 227a, or 230, is guilty of a felony and shall be punished by imprisonment for 2 years. Upon a second conviction under this subsection, the person shall be punished by imprisonment for 5 years. Upon a third or subsequent conviction under this subsection, the person shall be punished by imprisonment for 10 years.

STATEMENT OF APPEAL AND RELIEF REQUESTED

The People of the State of Michigan seek leave to appeal the decision issued “Unpublished” by the Michigan Court of Appeals on May 10, 2016, which reversed the Macomb County Circuit Court’s decision in sentencing the Defendant 10 years for a third or subsequent conviction for Felony Firearm, contrary to MCL 750.227b(1). See *People v Wilson*, unpublished opinion per curiam of the Court of Appeals, issued May 10, 2016 (Docket No. 324856) (attached as Appendix A).

The Defendant was convicted of Felony-Firearm and was sentenced as third Felony-Firearm offender. The Defendant’s previous convictions for Felony-Firearm arose from a single transaction. The People argued to the Trial Court that the plain language of MCL 750.227b allows for such a sentence. The Defendant argued that the sentence was improper pursuant to *People v Stewart*, 441 Mich 89; 490 NW2d 327 (1992), which relied on *People v Preuss*, 436 Mich 714; 461 NW2d 703 (1990) for its rationale and holding. In response, the People argued that *Preuss* was overruled by *People v Gardner*, 482 Mich 41; 753 NW2d 78 (2008), thus the rationale from *Preuss* no longer supported the holding from *Stewart*.

Despite the plain language of the statute, the Court of Appeals reversed the trial court based on the rationale that all lower courts are bound by *Stewart* until it is overruled by the Supreme Court. Therefore, to comport with the plain language of MCL 750.227b as well as to continue the logical course

set by *Gardner, People v Stewart* must be overruled. As such, pursuant to MCR 7.302(B), the People assert that significant grounds for appeal exist.

Accordingly, the People respectfully request that this Honorable Court **GRANT** this Application, **REVERSE** the decision of the Court of Appeals, and **REINSTATE** Defendant's sentence as a third Felony-Firearm offender.

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

The Defendant was convicted of Felony-Firearm and was sentenced as third Felony-Firearm offender. The Defendant's previous convictions for Felony-Firearm arose from a single transaction. The People argued to the Trial Court that the plain language of MCL 750.227b allows for such a sentence. (Tr. 11/19/14 at 41-44). The Defendant argued that the sentence was improper pursuant to *People v Stewart*, 441 Mich 89; 490 NW2d 327 (1992), which relied on *People v Preuss*, 436 Mich 714; 461 NW2d 703 (1990) for its rationale and holding. In response, the People argued that *Preuss* was overruled by *People v Gardner*, 482 Mich 41; 753 NW2d 78 (2008), thus the rationale from *Preuss* no longer supported the holding from *Stewart*.

The Trial Court sentenced the Defendant as a third Felony-Firearm offender. (Tr. 11/19/14 at 94). The Defendant appealed the sentence to the Court of Appeals. The Court of Appeals held that *People v Stewart* had not been overruled and that all inferior courts are bound to follow *Stewart* until it is overruled by the Michigan Supreme Court. (See Appendix A at p.7). Accordingly, the People respectfully request that this Honorable Court **GRANT** this Application, **REVERSE** the decision of the Court of Appeals, overrules *People v Stewart*, and **REINSTATE** Defendant's sentence as a third Felony-Firearm offender.

ARGUMENT

SINCE THE PLAIN LANGUAGE OF THE FELONY FIREARM STATUTE DOES NOT PRECLUDE THE DEFENDANT HAVING PRIOR CONVICTIONS FROM THE SAME INCIDENT, THE TRIAL COURT PROPERLY SENTENCED THE DEFENDANT AS A THIRD FELONY-FIREARM OFFENDER.

STANDARD OF REVIEW

Questions of statutory interpretation are reviewed de novo. *People v Schaefer*, 473 Mich 418, 427; 703 NW2d 774 (2005) .

ARGUMENT

The threshold issue is whether the sentencing court could include the two 1997 Felony Firearm convictions from the same incident as a basis of enhancement under the Felony Firearm statute. Under MCL 750.227b(1), “[u]pon a third or subsequent conviction [of Felony Firearm], the person **shall** be imprisoned for 10 years.” (Emphasis added). Despite the statute’s unambiguous language requiring only two “convictions”, the Michigan Supreme Court added an additional requirement in 1992. This Court ruled that both prior felony firearm convictions must arise from separate criminal incidents before enhancement to a third offender. *People Stewart*, 441 Mich 89, 95; 490 NW2d 327 (1992). Yet, the Court explicitly relied upon the recently overruled case of *People v Preuss*, 436 Mich 714; 461 NW2d 7 (1990) (overruled by *People v Gardner*, 482 Mi 41, 61; 753 NW2d 78 (2008)), in adding the separate-incident requirement. *Stewart*, 441 Mich at 94-95. In *Preuss*, the Court ruled that the Habitual Offender statute allowed the use of only one felony conviction

to increase a person's habitual status despite multiple convictions arising out of the same incident. *Preuss*, 436 Mich at 717. Finding no substantive difference between the enhancement provisions of the Habitual Offender Statute and the Felony Firearm Statute, the Court reasoned that Felony Firearm statute also requires prior convictions from separate incidents. *Stewart*, 441 Mich at 94-95.

In 2008, the Michigan Supreme Court overruled *Pruess* and, consequently, demolished the entire underpinning of the separate-incident requirement in *Stewart*. *Gardner*, supra. In *Gardner*, the Supreme Court revisited whether each felony conviction from a single incident could individually enhance a person's habitual status. *Id.* at 47. The Court overruled *Preuss* and found that each felony conviction out of a single transaction may increase a defendant's habitual status. *Id.* at 95. The Court emphasized that the *Preuss* Court's interpretation of the Felony Firearm statute ran counter to principles of statutory construction by not giving effect to the clear and unambiguous language of the statute. *Id.* at 51, 60. In analyzing the Habitual Offender statute, the Court noted that "[n]othing in the statutory text suggest that the felony convictions must have arisen from separate incidents." *Id.* at 51. Thus, this Court must look to the plain meaning of Felony Firearm statute in determining whether the legislature intended enhancement only for separate incidents.

As in the Habitual Offender Statute, nothing within the plain terms of the Felony Firearm statute limits this Court from counting multiple convictions

from the same incident as a basis for enhancement. On the contrary, the Felony Firearm Statute mandates a term of imprisonment “[u]pon a third or subsequent conviction.” The statute makes absolutely no reference to a same-incident test, and this Court must give effect to its clear and unambiguous meaning.

When this Court determines that a case has been wrongly decided, as This Court should with regard to Stewart, it must next determine whether it should overrule that precedent. The application of stare decisis is generally the preferred course, because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process. *People v Tanner*, 496 Mich 199, 250; 853 NW2d 653 (2014). However, stare decisis is a principle of policy rather than an inexorable command, and the Court is not constrained to follow precedent when governing decisions are unworkable or are badly reasoned. *Id.*

This Court has discussed the proper circumstances under which it will overrule prior case law. When performing a stare decisis analysis, this Court should review whether the decision at issue defies practical workability, whether reliance interests would work an undue hardship, and whether changes in the law or facts no longer justify the questioned decision. *Id.* at 250-251. As for the reliance interest, the Court must ask whether the previous decision has become so embedded, so accepted, so fundamental to everyone’s

expectations that to change it would produce not just readjustments, but practical real-world dislocations. *Id.* at 251.

As the *Gardner* Court aptly stated when deciding to overrule *Preuss*:

Stare decisis is not to be applied mechanically to forever prevent the Court from overruling earlier erroneous decisions determining the meaning of statutes. Rather, if a case was incorrectly decided, we have a duty to reconsider whether it should remain controlling law. In doing so, we review whether the decision at issue defies practical workability, whether reliance interests would work an undue hardship, and whether changes in the law or facts no longer justify the questioned decision. These criteria weigh in favor of overruling *Stoudemire* and *Preuss*.

Most significantly, the same-incident test has not created reliance interests that will be thwarted by overruling *Stoudemire* and *Preuss*; overruling these cases will not cause significant dislocations or frustrate citizens' attempts to conform their conduct to the law. To have reliance the knowledge must be of the sort that causes a person or entity to attempt to conform his conduct to a certain norm before the triggering event. The nature of a criminal act defies any argument that offenders attempt to conform their crimes--which by definition violate societal and statutory norms--to a legal test established by *Stoudemire* and *Preuss*. Moreover, to the extent that these cases implicate reliance interests, such interests weigh in favor of overruling them. Michigan citizens and prosecutors should be able to read the clear words of the statutes and expect that they will be carried out by all in society, including the courts.

We also note that the factor of practical workability bears little on our decision to overrule our previous erroneous interpretations of the habitual offender laws. The Legislature's clear directive to count each felony is no less workable--and indeed is arguably simpler to apply in practice--than the current, judicially imposed same-incident rule. [*Gardner, supra* at 61-62; internal citations and quotations omitted]

Thus, for the reasons quoted above, This Court must follow the path begun by *Gardner* and overrule *Stewart*.

The Defendant's felony firearm conviction is undeniably his third conviction and, as such, this Court must overrule *Preuss*, reverse the Court of Appeals, and affirm the Defendant's sentence of ten years imprisonment consecutive to his convictions for Unlawful Imprisonment.

RELIEF REQUESTED

Accordingly, the People respectfully urge this Honorable Court to **GRANT** this Application, **REVERSE** the ruling of the Court of Appeals, and **REINSTATE** Defendant's Felony Firearm sentence.

Respectfully Submitted,

ERIC J. SMITH (P46186)

Prosecuting Attorney

JOSHUA D. ABBOTT (P53528)

Chief Appellate Attorney

By: Emil Semaan

EMIL SEMAAN (P73726)

Assistant Prosecuting Attorney

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